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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ANN OTSUKA, an individual; JANIS KEEFE,) Case No.: C-07-02780 SI
 an individual; CORINNE PHIPPS, an)
 individual; and JUSTIN KISER, an individual;) **DECLARATION OF DWIGHT**
 individually and on behalf of all others similarly) **STEWART, PH.D., IN SUPPORT OF**
 situated, RENEE DAVIS, an individual;) **PLAINTIFFS' OPPOSITION TO**
 individually and on behalf of all others similarly) **DEFENDANTS' MOTION TO**
 situated) **DECERTIFY PLAINTIFFS' CERTIFIED**
) **REST BREAKS CLASS**

Plaintiffs,
 vs.

POLO RALPH LAUREN CORPORATION; a)
 Delaware Corporation; POLO RETAIL, LLC., a)
 Delaware Corporation; POLO RALPH) DATE: 11/7/2008
 LAUREN CORPORATION, a Delaware) TIME: 9:00 A.M.
 Corporation, doing business in California as) LOCATION: Courtroom 10, 19th Floor
 POLO RETAIL CORP; and FASHIONS) 450 Golden Gate Avenue
 OUTLET OF AMERICA, INC., a Delaware) San Francisco, California 94102
 Corporation)

Defendants.) JUDGE: Hon. Susan Illston
)

1 I, Dwight Steward, declare and state as follows:

2 1. I am an individual over the age of 18 and am a resident of the State of
3 Texas.

4 2. I am an economist and statistician. As an economist and statistician, I
5 have provided consultation, reports, and expert witness testimony on statistical and
6 economic issues involving employment and labor market discrimination, wage and hour
7 violations, and economic damages in both litigation and non-litigation settings. I have
8 served as an expert witness and consultant in federal and state court wage and hour cases
9 in the states of California, Texas, Illinois, New Jersey, New York, Louisiana, and
10 Pennsylvania. In addition to serving as a consultant and expert witness, I have also held
11 teaching positions in the Department of Economics at the University of Texas at Austin,
12 the Red McCombs School of Business at the University of Texas at Austin and in the
13 College of Business Administration at Sam Houston State University. My full
curriculum vitae is attached to this report.

14 3. In this case I have been retained by the Law Office of Patrick R. Kitchen to
15 provide an economic and statistical analysis. Currently, I have been asked to perform a
16 preliminary review of the rest break surveys that have been returned to date. To perform
17 my preliminary review, I have reviewed the list of Polo class members, the survey
instrument used to collect responses, and an electronic spreadsheet of survey results.

18 4. It is my understanding that The Law Office of Patrick R. Kitchen
19 disseminated two different rest break surveys of the Polo class members in this case. In
20 the first survey, 1,000 surveys were sent to a systematic sample comprised of Polo class
21 members with last names beginning with A, B, or C. In the second survey, 500 surveys
22 were sent to a random sample of Polo class members drawn from the list of all 6,444 Polo
23 class members.

24 5. It is my understanding the same three questions were asked in each
25 survey. The questions asked of the Polo class members dealt with the former employees'
26 ability to take full, uninterrupted 10-minute rest breaks while they were employed at
27 Polo. In question one, which is a true or false question, the Polo class survey asks the
28 respondent if there was ever a day where they worked more than 3.5 hours and they were
not allowed to take a rest break. In question two, the Polo class survey asks the

1 respondent to estimate the percentage of days where they worked more than 3.5 hours
 2 and were not allowed to take a rest break. Question three asks if Polo ever paid the
 3 respondent for rest breaks that were missed.

4 6. As of the date of this report, 118 individuals, or 11.8% of the total
 5 systematic sample, have returned surveys. 41 individuals, or 8.2% of the random sample,
 6 have returned surveys.

7 7. 108 of the systematic sample surveys, or 91.5% of the systematic sample
 8 responses, provided answers that were consistent across questions number one and two.
 9 A survey's responses are consistent if the respondent answered 'true' to question one and
 10 reported a percentage greater than 0 in question two. Alternatively, a survey's responses
 11 are consistent if the respondent answered 'false' to question one and did not report a
 12 percentage greater than 0 in question two. 38 of the random sample surveys, or 92.7% of
 13 the random sample responded, gave answers that were consistent across questions
 14 number one and two.

15 8. Based on the surveys received to date, my preliminary review of question
 16 one of the systematic sample shows that 81.5% of the respondents reported having at
 17 least one day in which they worked 3.5 hours or more where they were not allowed to
 18 take a rest break. 89.5% of the random sample reported having at least one day in which
 19 they worked 3.5 hours or more where they were not allowed to take a rest break.
 20 Descriptive statistics for the systematic and random samples are shown in Table 1. Table
 21 3 shows descriptive statistics for the systematic sample for select Polo store locations.

22 9. My preliminary review of question two of the systematic sample shows
 23 that the respondents that reported having at least one day in which they worked 3.5 hours
 24 or more where they were not allowed to take a rest break missed, on average, 48.2% of
 25 their rest breaks. The respondents of the random sample reported missing, on average,
 26 48.8% of their rest breaks. Descriptive statistics for the systematic and random samples
 27 are shown in Table 2. Table 4 shows descriptive statistics for the systematic sample for
 28 select Polo store locations.

10. It is my understanding that survey responses are still in the process of
 being collected and data entered. When the data collection and validation process is
 complete I will be able to perform a statistical analysis of the survey responses. The

1 analysis of the Polo class surveys will provide statistical estimates that can be used to
2 construct scientifically valid class-wide estimates of the number of missed rest breaks.
3 The statistical analysis will provide statistical confidence intervals and sampling errors
4 for the survey results.

5
6 I respectively reserve the right to make changes to this declaration as additional
7 information and documents are made available to me. I declare under penalty of perjury
8 according to the laws of the United States of America that the foregoing is true and
9 correct.

10 Executed on October 17, 2008.

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14 Dwight D. Steward
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Table 1

Results of Survey Question Number 1: When I was employed by Polo, there was at least one day in which I worked more than 3.5 hours during which I did not take a rest break because Polo discouraged, impeded, or dissuaded me from taking it....

Sample	Total Respondents	Reported Missing Rest Breaks	Percentage of Total Reporting Missing Rest Break
Systematic	108	88	81.5%
Random	38	34	89.5%

Notes:

1. The figures presented above are preliminary. The figures are subject to change as additional surveys become available and analysis continues.
2. Respondents that left all questions blank are excluded from the above tabulations.
3. Respondents that reported inconsistent answers for questions one and two were excluded from the above tabulations.

Table 2

Results of Survey Question 2: I estimate that I missed out on a Rest Break about ____ percent of the days that I worked for Polo for more than 3.5 hours because Polo discouraged, impeded or dissuaded me from exercising my right to take a Rest Break

Sample	Total Respondents that Missed a Rest Break	Average Percent of Rest Breaks Missed
Systematic	88	48.2%
Random	34	48.8%

Notes:

1. The figures presented above are preliminary. The figures are subject to change as additional surveys become available and analysis continues.
2. Respondents that left all questions blank are excluded from the above tabulations.
3. Respondents that reported inconsistent answers for questions one and two were excluded from the above tabulations.
4. The average percent of rest breaks missed is based on the number of respondents who reported missing a rest break.

Table 3

Store by Store Results of Survey Question Number 1: When I was employed by Polo, there was at least one day in which I worked more than 3.5 hours during which I did not take a rest break because Polo discouraged, impeded, or dissuaded me from taking it....

	Total		
	Systematic	Reported	
	Sample	Missing Rest	Percentage of
Store	Respondents	Breaks	Total
Cabazon	21	20	95.2%
Camarillo	11	8	72.7%
Carlsbad	14	11	78.6%
Vacaville	11	7	63.6%

Notes:

1. The figures presented above are preliminary. The figures are subject to change as additional surveys become available and analysis continues.
2. Respondents that left all questions blank are excluded from the above tabulations.
3. Respondents that reported inconsistent answers for questions one and two were excluded from the above tabulations.
4. Only stores where more than 10 systematic surveys have been returned are shown in the above table.

Table 4

Store-by-Store Results of Survey Question 2: I estimate that I missed out on a Rest Break about ____ percent of the days that I worked for Polo for more than 3.5 hours because Polo discouraged, impeded or dissuaded me from exercising my right to take a Rest Break

Store	Total Respondents that Missed a Rest Break	Average Percent of Rest Breaks Missed
	Break	Breaks Missed
Cabazon	20	51.4%
Camarillo	8	31.5%
Carlsbad	11	37.3%
Vacaville	7	27.9%

Notes:

1. The figures presented above are preliminary. The figures are subject to change as additional surveys become available and analysis continues.
2. Respondents that left all questions blank are excluded from the above tabulations.
3. Respondents that reported inconsistent answers for questions one and two were excluded from the above tabulations.
4. Only stores where more than 10 systematic surveys have been returned are shown in the above table.
5. The average percent of rest breaks missed is based on the number of respondents who reported missing a rest break.